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No. 02-1099

In the Supreme Court of the United States

ED J. MIRELES AND PAUL J. ROA, PETITIONERS

v.

UNITED STATES OF AMERICA
AND CHARLES M. CARBERRY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a consent decree entered into by union officials and the United States provides authority for imposing sanctions against union officials for actions that bring reproach upon the union.

2. Whether the court of appeals correctly applied the substantial evidence standard.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	7
Conclusion	11

TABLE OF AUTHORITIES

Cases:

Bloom v. *General Truck Drivers*, 783 F.2d 1356 (9th Cir. 1986)	7, 8
Department of Labor v. *Congleton*, 743 F.2d 428 (6th Cir. 1984)	10
Finnegan v. *Leu*, 456 U.S. 431 (1982)	3, 7, 8, 9
Parini v. *International Bhd. of Teamsters*, 568 F. Supp. 1246 (N.D. Ill. 1983), aff'd, 749 F.2d 34 (7th Cir. 1984)	9
Screen Extras Guild, Inc. v. *Superior Court*, 800 P.2d 873 (Cal. 1990)	7, 8
United States v. *International Bhd. of Teamsters*:	
905 F.2d 610 (2d Cir. 1990)	8
931 F.2d 177 (2d Cir. 1991)	2
247 F.3d 370 (2d Cir. 2001)	7
803 F. Supp. 761 (S.D.N.Y. 1992), aff'd as modified, 998 F.2d 1101 (2d Cir. 1993)	2, 3

Statutes:

Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*	10
Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 *et seq.*	6
Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1964	2

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OPINIONS BELOW

The per curiam opinion of the court of appeals (Pet. App. 1a-7a) is reported at 315 F.3d 97. The opinion of the district court (Pet. App. 8a-13a) is unreported. The opinion of the Independent Review Board (Pet. App. 14a-50a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 23, 2002. The petition for a writ of certiorari was filed on January 21, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On June 28, 1988, the United States filed an action under the civil remedies provision of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1964, against the International Brotherhood of Teamsters (IBT), its General Executive Board, the eighteen members of the General Executive Board, the Commission of La Cosa Nostra, and various members and associates of La Cosa Nostra. *United States* v. *International Bhd. of Teamsters*, 931 F.2d 177, 180 (2d Cir. 1991) (*1991 Election Rules Order*). The Government sought extensive equitable relief to eradicate criminal influence over the IBT. *Ibid.*

A consent decree approved by the district court on March 14, 1989 (the Consent Decree), resolved the government's claims against the IBT defendants. *1991 Election Rules Order*, 931 F.2d at 179. The Consent Decree instituted structural reforms of the IBT's electoral and disciplinary processes in order to eradicate criminal influence over the union. The Consent Decree requires "that the IBT * * * be maintained democratically, with integrity and for the sole benefit of its members without unlawful outside influence." *United States* v. *International Bhd. of Teamsters*, 803 F. Supp. 761, 767 (S.D.N.Y. 1992) (*IRB Rules*), aff'd as modified, 998 F.2d 1101 (2d Cir. 1993).

The Consent Decree fundamentally restructured the IBT's electoral system to provide for direct, secret-ballot, rank-and-file election of the union's top officers in a process supervised by a court-appointed Election Officer. *IRB Rules*, 803 F. Supp. at 767, 770. The IBT's initial rank-and-file election pursuant to the Consent Decree was held in 1991. After certification by the Election Officer of the results of that election, the

Consent Decree provided for the establishment of an Independent Review Board (IRB). *Id.* at 800.

"The IRB is a permanent institution vested with power to investigate and eradicate corruption, and to monitor the IBT's attempts to eradicate corruption." *IRB Rules*, 803 F. Supp. at 780. The three-member IRB possesses broad investigatory and disciplinary powers. In particular, the Consent Decree provides that the IRB "shall exercise such investigative authority as the General President and General Secretary-Treasurer are authorized and empowered to exercise pursuant to the * * * IBT Constitution, as well as any and all applicable provisions of law." *Id.* at 802. The IRB may investigate, *inter alia*, allegations of offenses under the IBT Constitution including interference with the right of union members to "seek election to office" and any "conduct that in the IRB's view brings reproach upon the Union." *Ibid.*

2. Petitioner Ed J. Mireles served as Secretary-Treasurer and principal officer of IBT Local 952 from 1989 until 1999. After his election in 1989, Mireles instituted a policy at the local that required IBT members who served as business agents for the union, as a condition of their employment, to render themselves ineligible to run for office against him.[1] To be eligible to seek election to an office, an IBT member must remain in continuous good standing for two years, which requires, *inter alia*, the timely payment of monthly membership dues. Mireles required the business agents, upon penalty of termination, to miss a

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[1] Business agents serve a local union by "participat[ing] in the negotiating of collective-bargaining agreements, organizing * * * union members, and processing * * * grievances." *Finnegan* v. *Leu*, 456 U.S. 431, 434 (1982).

timely dues payment at least once within the 24-month period preceding nominations for the next local union election. Pet. App. 2a, 16a.

Mireles sought to disqualify business agents from seeking elective office because they represented the only realistic challenge to the incumbent leadership. Ensuring the disqualification of business agents therefore would allow Mireles and his executive board to maintain control over the union in perpetuity. Petitioner Paul J. Roa assisted Mireles in the scheme by informing the business agents that they would be fired if they did not comply with Mireles's policy. Pet. App. 46a-49a.

3. On October 22, 1998, the IRB recommended that the union bring disciplinary charges against Mireles and Roa on the basis that the dues scheme "brought reproach on the IBT in violation of * * * the IBT Constitution." Pet. App. 14a, 16a. After the union held hearings on the charges, the IRB held hearings and reviewed the matter *de novo*. *Id.* at 17a-18a.

On October 17, 2000, the IRB issued a decision sustaining the charges against both Mireles and Roa. Pet. App. 14a-50a. The IRB found that Mireles, who had testified in person at the IRB hearing, "did himself testify falsely and also encouraged others to lie." *Id.* at 49a. The IRB concluded that "the testimony of current and former Local 952 officers, Business Agents and clerical employees established Mireles's knowing role in the creation and implementation" of the scheme. *Id.* at 46a. The IRB found that the testimony of those witnesses was corroborated by computer records establishing that officers, business agents, and employees of the local paid their dues through an automatic check-off system before 1990, but that the method of dues payment for business agents changed to a self-payment

system within three months after Mireles assumed office. That change, the IRB determined, "enabled Mireles to * * * implement the missed dues scheme and * * * to monitor compliance with it." *Ibid.* The computer records confirmed that, with one exception, "no Business Agent on the self-pay system was eligible to run in the 1992, 1995, and 1998 Local 952 Local officer elections." *Ibid.*

After reviewing the evidence establishing Mireles's role in the scheme, the IRB determined:

> Mireles' testimony that he was unaware how the dues of the Business Agents were paid at the start of his administration, had not instructed anyone to remove the Business Agents from a dues check-off system to a self pay system, had not directed members of the Executive Board to be restored to the dues check-off system and was unaware of any policy whereby Business Agents of Local 952 were either encouraged to or required to miss a monthly dues payment was not credible in light of the control he exercised, the timing of the change, the timing of the late dues payments, and that only he and the officers of the Local benefited from the widespread * * * ineligibility of Business Agents and the continuation of the process through the 1998 Local 952 Local officer election cycle.

Pet. App. 48a. The IRB also "observed Roa as he testified * * * and found him to lack credibility." *Id.* at 50a.

The IRB sanctioned Mireles by suspending him from IBT membership for four years and barring him from holding a union office for seven years. Pet. App. 50a. The IRB suspended Roa from membership for two

years and barred him from holding a union office for four years. *Ibid.*

4. a. In accordance with the Consent Decree and IRB Rules, the IRB submitted its decision to the district court for entry as an order. Pet. App. 8a. On February 21, 2001, the district court issued an opinion upholding the IRB's decision. *Id.* at 8a-13a.

b. The court of appeals affirmed. Pet. App. 1a-7a. The court first rejected petitioners' contention that the IRB lacked jurisdiction to impose sanctions against them because their scheme did not violate the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 401 *et seq.* The court explained that "the scope of the IRB's power under the Consent Decree is not limited to violations of federal labor or criminal law"; instead, the Consent Decree empowers the IRB to proscribe conduct that "brings reproach upon" the union in violation of the IBT Constitution. Pet. App. 4a. The court added that, while petitioners rely on decisions holding that business agents who retain their rights as union members after discharge have no LMRDA cause of action, the issue in this case is "whether the conditioning of union employment on relinquishment of a membership right brought reproach upon the union." *Id.* at 5a.

The court also held that substantial evidence supported the IRB's findings that petitioners' conduct brought reproach upon the union. Pet. App. 6a-7a. After reviewing the evidence relied upon by the IRB, including the testimony of numerous witnesses and the evidence from the computer records, the court explained that petitioners' actions "secretly narrowed the field of possible officers, partially insulated an office-holder from challenge, and thereby impaired the system of open competitive election to union office." *Id.* at 7a.

Petitioners' scheme, the court concluded, was "enough to bring reproach upon the union." *Ibid.* The court rejected petitioner' arguments concerning the credibility and weight of certain testimony, explaining that the IRB is "best equipped to evaluate the demeanor, credibility, and ultimately the culpability of those who appear before them." *Ibid.* (quoting *United States* v. *International Bhd. of Teamsters*, 247 F.3d 370, 380 (2d Cir. 2001)).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. Petitioners renew their argument (Pet. 5-15) that their scheme did not violate the LMRDA and that the IRB therefore lacked jurisdiction to impose sanctions against them. Petitioners assert that the decision of the court of appeals conflicts with the interpretation of the LMRDA adopted in this Court's decision in *Finnegan* v. *Leu*, 456 U.S. 431 (1982), and in two decisions of other courts, *Bloom* v. *General Truck Drivers*, 783 F.2d 1356 (9th Cir. 1986), and *Screen Extras Guild, Inc.* v. *Superior Court*, 800 P.2d 873 (Cal. 1990). Petitioners' arguments lack merit.

In *Finnegan*, this Court held that the LMRDA does not bar an elected union official from terminating appointed business agents so long as the agents' rights as union members are not infringed. 456 U.S. at 435-442. The Court explained that the "Act's overriding objective was to ensure that unions would be democratically governed" and "responsive to the will of the union membership," and that "the ability of an elected union president to select his own administrators is an integral

part of ensuring a union administration's responsiveness to the mandate of the union election." *Id.* at 441. In *Screen Extras Guild*, the California Supreme Court, applying *Finnegan*, concluded that the LMRDA preempted a former business agent's state law claim of wrongful discharge. 800 P.2d at 882. And in *Bloom*, which also involved a wrongful discharge action brought by a former business agent, the Ninth Circuit held that the particular action at issue was not preempted by the LMRDA, 783 F.2d at 1362, but observed that the LMRDA generally reflects a federal interest in permitting elected union leaders to replace incumbent union administrators, *id.* at 1361-1362.

The issues concerning the LMRDA addressed in *Finnegan*, *Bloom*, and *Screen Extras Guild* have no relevance to the IRB's enforcement of the Consent Decree in this case. As the court of appeals correctly explained in rejecting petitioner's reliance on those decisions, the IRB's exercise of jurisdiction "is not limited to violations of federal labor law but is instead, under the Consent Decree, coextensive with that of the IBT General President and General Secretary-Treasurer." Pet. App. 5a. The Consent Decree vests the IRB with authority "'to interpret and apply' the IBT Constitution and 'to decide all questions of law thereunder.'" *Id.* at 3a (quoting *United States* v. *International Bhd. of Teamsters*, 905 F.2d 610, 619 (2d Cir. 1990)). One of those questions is whether a union member or officer has engaged in conduct that "brings reproach upon" the union. Pet. App. 4a. Because the IRB's jurisdiction in this case is validly premised upon the Consent Decree, decisions addressing whether a business agent's termination violates the LMRDA or whether a wrongful discharge action is preempted by

the LMRDA—the issues discussed in *Finnegan*, *Screen Extras Guild*, and *Bloom*—are inapposite.[2]

Moreover, petitioners err in asserting (Pet. 6-9, 11-15) that their conduct constituted protected LMRDA activity under *Finnegan*, *Screen Extras Guild*, and *Bloom*. This Court explained in *Finnegan* that the LMRDA ensures the responsiveness of unions to the will of the membership "as expressed in open, periodic elections," and that the statute thus permits an elected representative to choose his own union staff. 456 U.S. at 441. This case, however, does not involve the prerogative of an elected union officer to appoint an administration after an election. Instead, it involves petitioners' efforts to deny union members the ability to challenge the incumbent leadership democratically in an election.

As a result, whereas *Finnegan* is premised on the notion that the LMRDA protects only the rights of membership in a union rather than employment by a union, 456 U.S. at 436-438, petitioners' conduct in denying union members the opportunity to seek elected office amounted to the forced "relinquishment of a membership right." Pet. App. 5a. Neither *Finnegan*, *Bloom*, nor *Screen Extras Guild* involved the denial of union membership rights, and none of those decisions suggests that petitioners' conduct is insulated from a finding that it brought reproach upon the union in violation of the IBT Constitution.

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[2] The district court decision relied upon by petitioners (Pet. 9) (citing *Parini* v. *International Bhd. of Teamsters*, 568 F. Supp. 1246 (N.D. Ill. 1983), aff'd, 749 F.2d 34 (7th Cir. 1984)), is likewise inapposite because it concerned an LMRDA claim and not a claim based on the IBT Consent Decree.

2. Petitioners contend (Pet. 15-24) that the holding of the court of appeals that the IRB's decision is supported by substantial evidence conflicts with the opinion of the Sixth Circuit in *Department of Labor* v. *Congleton*, 743 F.2d 428 (1984). In *Congleton*, which involved a claim for benefits under the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, the Sixth Circuit explained that a decision of an administrative law judge to credit certain testimony was not supported by substantial evidence because it failed to provide reasons for crediting the testimony and ignoring contrary evidence. 743 F.2d at 429-430. Petitioner argues (Pet. 17-24) that the IRB's decision in this case similarly lacks substantial evidentiary support because the IRB failed to provide non-conclusory reasons for crediting the testimony of certain witnesses. That fact-bound contention does not warrant review.

Moreover, the IRB's comprehensive opinion and findings (Pet. App. 14a-50a) contains explanations of the reasons for crediting certain testimony. See, *e.g.*, *id.* at 31a ("[W]e credit [the Office Manager of Local 952, Ms. Barnes'] testimony given to the Chief Investigator in 1998 in that it draws support from other testimony and the TITAN [computer] records."); *id.* at 35a ("We accept Smith's testimony as credible notwithstanding her false testimony in 1996 [because] Smith explained why she lied in 1996. It was out of fear of Mireles."); *id.* at 48a (discussing credibility of Mireles in detail). The IRB's decision also addresses the contrary evidence. See, *e.g.*, *id.* at 40a ("As with [Mireles and Roa's witness] Ashley, we determined we could not credit Fitzgerald's testimony. It was unsupported by anyone. Moreover, it was at odds with the credible evidence we found supported the charges."). The court of appeals therefore correctly concluded that the IRB's decision to

discredit petitioners' testimony and to credit the testimony and evidence implicating petitioners was supported by substantial evidence. That factual determination does not warrant review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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